

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING
ORDINANCE NUMBER 1712, THE ZONING ORDINANCE (ZA-94-03).**

WHEREAS, the Milwaukie City Planning Commission initiated this project in order to provide clear and objective standards regarding fencing, and

WHEREAS, it is the intent of the Milwaukie Comprehensive Plan that implementation ordinances be consistent and meet the intent of the processes and policies supported by the Comprehensive Plan, and

WHEREAS, public hearings were held on this matter by the City Planning Commission on May 10, 1994, and by the City Council on July 19, 1994, 1994,

**NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS
FOLLOWS:**

Section 1. Findings. Findings of fact in support of the proposed amendments are as follows:

1. Zoning text amendments must meet the criteria of Sections 904 and 905 of the City Zoning Ordinance. These criteria are addressed in subsequent findings.
2. Section 904.1A. requires:

Applicable requirements of Section 1003.

Section 1003 requires a completed application and site plan. An application is included in File ZA-94-03, however, since this is a legislative text amendment, no site plan is required.

3. Section 904.1B. requires:

Reasons for requesting the proposed text amendments.

The Milwaukie City Planning Commission initiated a process to revise the current standards for fencing because existing code references for fencing are subjective and often require interpretation. The proposed new standards are intended to be clear and objective, minimizing the need for interpretation.

4. Section 904.1C. requires:

Explanation of how the proposed text amendment is consistent with other provisions of this Ordinance.

The proposed text amendments to Sections 103 and 401.1A. provide instructions for the implementation of fence standards which will insure consistency within the overall text of the Zoning Ordinance.

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5. Section 904.1D. requires the following be satisfied.

The approval criteria of Section 905.

These criteria are satisfied in subsequent findings.

6. Section 905.1A. requires:

The proposed amendment must conform to applicable Comprehensive Plan goals, policies, and objectives and be consistent with the provisions of City ordinances.

Objective 2 of the Plan Review and Amendment Process Chapter within the Comprehensive Plan requires that the Comprehensive Plan be implemented through appropriate ordinances and action.

Modifications to these sections of the Zoning Ordinance will have the effect of making fence standards more appropriate and easier to implement because of the use of clearer objectives and standards. This will reduce the possibility of conclusions or decisions that are discretionary in nature. Fence standards will be more understandable to both the public and decision makers.

By revising these sections, fence standards will also be implemented "more appropriately," thus meeting the intent of Objective 2.

7. Section 905.1B. requires:

The anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The Planning Commission and City Council shall use its discretion to weight these factors in determining the intent of the proposed zone.

The factors mentioned relate to a physical development proposal and are not applicable to a legislative zoning text amendment.

8. Section 905.1C. requires:

The proposed amendment will meet or can be determined to reasonably meet applicable regional, State, or federal regulations.

Fence standards are not specifically addressed by regional, State, or federal regulations except that the State Uniform Building Code requires building permits for fences over 6 feet in height. In addition, court case records have held that local government processes must include "clear and objective standards." The primary intent of these amendments is to provide fence provisions with "clear and objective standards."

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9. Section 905.1D. requires:

The proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

This criterion is not applicable as it relates to a specific development proposal rather than to a text amendment.

Section 2. Zoning Ordinance Text Amendments. The Zoning Ordinance text of Ordinance Number 1712 is amended as described in Exhibit A.

Read the first time on July 19, 1994, and moved to a second reading by 4 - 1 vote of the City Council.

Read the second time and adopted by the City Council on July 19, 1994.

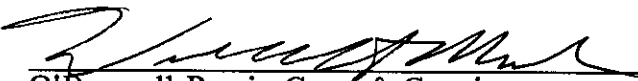
Signed by the Mayor on July 19, 1994.


Craig Lomnicki, Mayor

ATTEST:


Pat Duval, City Recorder

Approved as to form:


O'Donnell Ramis Crew & Corrigan
City Attorney

Bold/Caps = New Text
Strikeout = Deleted Text

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Add to:

- 103 **FENCE: MEANS ANY ARTIFICIALLY CONSTRUCTED BARRIER OF ANY MATERIAL OR COMBINATION OF MATERIALS ERECTED FOR PURPOSE OF ENCLOSING, PROTECTING, OR SCREENING AREAS OF LAND AND USES THEREON.**

Modify:

- 401.1A. Fences, walls and plantings may be constructed or maintained in yards with the following limitations:

Fences, walls, or plantings shall be constructed or maintained in yards only so as to permit unobstructed vision of passenger vehicle operations when approaching intersecting streets or driveways. **FENCE, WALL AND PLANTING STANDARDS TO MAINTAIN UNOBSTRUCTED VEHICLE VISION ARE TO BE PROVIDED BY CITY PUBLIC WORKS AS PART OF THE CLEAR VISION DETERMINATION PROCESS SPECIFIED WITHIN THE MUNICIPAL CODE.** ~~Fences, AND walls, and plantings on perimeters in areas other than those obstructing the vision of passenger vehicle operators shall be constructed or maintained so as to ensure light and air and maintain aesthetic freedom for adjacent properties.~~ **TO THE FOLLOWING STANDARDS:**

1. **RESIDENTIAL ZONES AND RESIDENTIAL USES IN ALL ZONES: MAXIMUM HEIGHT 6 FEET FOR REAR AND SIDE YARDS, 42 INCHES FOR FRONT YARDS. NO ELECTRIFIED, BARBED OR RAZOR WIRE FENCING IS PERMITTED.**
2. **COMMERCIAL ZONES: MAXIMUM HEIGHT 6 FEET. NO ELECTRIFIED WIRE IS PERMITTED. BARBED OR RAZOR WIRE MAY BE PERMITTED FOR SECURITY PURPOSES ON TOP OF A MAXIMUM HEIGHT FENCE FOLLOWING A TYPE II ADMINISTRATIVE REVIEW AS PER SECTION 1011.2 IN WHICH A DETERMINATION HAS BEEN MADE THAT THE PROPOSED FENCING WILL NOT ADVERSELY IMPACT THE HEALTH, SAFETY OR WELFARE OF ADJACENT PROPERTY OCCUPANTS. ALL OUTDOOR STORAGE SHALL REQUIRE A 6 FOOT HIGH SIGHT OBSCURING FENCE.**
3. **INDUSTRIAL ZONES: MAXIMUM HEIGHT 8 FEET. NO ELECTRIFIED WIRE IS PERMITTED. BARBED OR RAZOR WIRE MAY BE PERMITTED FOR SECURITY PURPOSES ON TOP OF A MAXIMUM HEIGHT FENCE EXCEPT WHERE SUCH**

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FENCING IS PROPOSED ADJACENT TO RESIDENTIAL ZONES OR RESIDENTIAL USES IN WHICH CASE SUCH MAY BE ALLOWED FOLLOWING A TYPE II ADMINISTRATIVE REVIEW AS PER SECTION 1011.2 IN WHICH A DETERMINATION HAS BEEN MADE THAT THE PROPOSED FENCING WILL NOT ADVERSELY IMPACT A THE HEALTH, SAFETY OR WELFARE OF ADJACENT PROPERTY OCCUPANTS. ALL OUTDOOR STORAGE SHALL REQUIRE A SIGHT OBSCURING FENCE WITH A MINIMUM HEIGHT OF 6 FEET.

~~A fence, wall or planting over the height of six (6) feet shall be presumed to be confining and detrimental to adjacent properties.~~ **IN ALL CASES, FENCE AND WALL HEIGHT SHALL BE MEASURED FROM THE TOP OF THE FENCE OR WALL TO THE HIGHEST GROUND LEVEL WITHIN A ONE FOOT HORIZONTAL DISTANCE OF THE FENCE.**